In The
Supreme Court of the United States

OCTOBER TERM, A.D. 1963

No. 459

JONES OIL COMPANY and TREVLYN OIL COMPANY,

Petitioners

VS.

THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, SOCONY-MOBIL OIL COMPANY, INC., TEXACO, INC., PHILLIPS OIL COMPANY, SHELL OIL COMPANY, SCHERMERHORN OIL CORPORATION, THE HEFNER COMPANY, BEARD OIL COMPANY and KERR-McGEE OIL INDUSTRIES, INC.

Respondents,

Petition For A Writ Of Certiorari To The Supreme Court Of The State Of Oklahoma

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September, 1963

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INDEX

	PAGE
Opinion	2
Jurisdiction	2
Question	3
Statement	4
Title 52 O.S., Sections 287.1 to 287.15	4
Reason for granting writ	7
Bolling v. Sharpe, 347 U.S. 497, 499, 98 L. ed. 884, 886, 74 S. Ct. 693	20
Frost v. Corporation Commission of Oklahoma, 287 U.S. 515, 522, 72 L. ed. 483, 488, 49 S. Ct. 235	20
Grison Oil Corporation v. Corporation Commission, 186 Okl. 548, 99 P. 2d 134	21
Lone Star Gas Co. v. State of Texas (1938), 58 S. Ct. 883, 304, U.S. 224, 84 L. Ed. 1304, rehearing denied (1938), 58 S. Ct. 1050, 304 U.S. 590, 82 L. Ed. 1549	20
Louisville Gas & Electric Co. v. Coleman, 277 U.S. 32, 37, 72 L. ed. 770, 774, 48 St. Ct. 423	20
Maxwell v. Bugbee, 250 U.S. 525, 541, 63 L. ed. 1124, 1132; 40 S. Ct. 2	20, 21
Norris v. Alabama, 294 U.S. 587, 589, 590, 79 L. ed. 1074, 55 S. Ct. 579	14

PAGE

Phillips Petroleum Co. v. Peterson, 218 F. 2d 926, 933, 934, (10th C. 1954) 20

Southern R. R. Co. v. Greene, 216 U.S. 400, 412, 54 L. ed. 536, 539, 30 S. Ct. 287 21

State v. Lone Star Gas Co., Tex. Civ. App. (1935), 86 S.W. 2d 484 20

Truax v. Corrigan, 257 U.S. 312, 332, 333, 66 L. ed. 254, 42 S. Ct. 124 20

Conclusion 22

Appendix A 23

Syllabus by the Court 23

Appendix B 36

Report of the Commission 36

Findings 38

Order 44

Appendix C 46

Appendix D Index 48

Appendix D 49

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Respondents.

Petition For A Writ Of Certiorari To The Supreme Court Of The State Of Oklahoma

Petitioners, JONES OIL COMPANY and TREVLYN OIL COMPANY, pray that a writ of Certiorari be issued to review the judgment of the Supreme Court of Oklahoma, entered in the above case May 14, 1963.

OPINION BELOW

The opinion of the Oklahoma Supreme Court, reprinted in Appendix A hereto, is reported at 382 P. 2d 751.

The report and order of the Oklahoma Corporation Commission entered January 10, 1962, reprinted in Appendix B hereto, is unreported.

JURISDICTION

The Judgment of the Oklahoma Supreme Court was entered May 14, 1963. Timely Petition for Rehearing was filed and was denied June 18, 1963. This petition is filed within the ninety day period provided therefor. The jurisdiction of this Court is invoked under 28 U.S.C., Sec. 1257 (3).

Before the Oklahoma Supreme Court substantial Federal questions were raised in that the validity of the Order, reprinted in Appendix B, and the Plan of Compulsory Unitization (R. Ex. 7) approved by it were

challenged as being violative of the Fourteenth Amendment to the Federal Constitution. The Oklahoma Supreme Court decided against the Petitioners. As a result, the property rights of Petitioners have been substantially aggrieved. In Oklahoma, in its opinion (Appendix A hereof), the Supreme Court decided substantial Federal questions and rested its decision upon the conclusions which it reached on those questions. The conclusions of that Court are in error.

QUESTION

Can Petitioners, small independent oil operators, be compelled, against their will, by an Order of the Oklahoma Corporation Commission to deliver possession of and to yield their right to operate and produce their oil and gas wells and leases to Socony-Mobil Oil Company, Inc., a large integrated oil company, where Petitioners are forced to accept, in lieu of the oil and gas produced from their wells and leases, a participation percentage in all of the oil and gas produced from the unit area covered by the Commission Order when the evidence both in support and in protest of the promulgation of the Commission Order conclusively shows that the participation in unit production, as compelled by the Order,

is not measured on the basis of like values as required by applicable Oklahoma Statutes?

STATEMENT

This cause originates under the Oklahoma Compulsory Unitization Act, Sections 287.1 to 287.15, Title 52 Oklahoma Statutes, which is administered by the Oklahoma Corporation Commission, called "Commission" herein. The purpose of the act is to effect the conservation of oil and gas. To effectuate this purpose, a separate private entity called "a body politic and corporate" in the Act, is created by an Order of the Commission. This private separate entity is in the nature of a private monopoly. By the Order of the Commission and the Plan of Unitization (R. Ex. 7, P. 248 and P. 256) approved by the Order the "body politic and corporate" is vested with the sole power and authority to possess, operate, develop, and produce the oil and gas wells and leases within the unit area covered by the Order and Plan. Petitioners, private owners of wells and oil and gas leases in the unit area even though they have not agreed to the proposed operation on a unit basis, nonetheless, have been compelled, against their will, to turn their private property over to this private entity, and

more particularly to Socony-Mobil Oil Company, Inc., a privately owned oil company in competition with Petitioners. After having been compelled so to do, Petitioners are no longer entitled to possession or control of their separate property. Nor are they any longer entitled to determine the total costs and expenses which will be charged against them or their property. (R. Ex. 7, P. 260).

The "body politic and corporate", or private monopoly created by the Order of the Commission, is given complete power and authority over all oil and gas development and production operations in the unit area. Petitioners, though compelled against their will to subject their property to this type of *state sanctioned administrative and operational procedure*, are given only two rights, neither of which are adequate compensation for the rights taken, in return for the forced relinquishment of the possession and control of their own property. The rights given are:

(1) The right to vote their fractional percentage interest on a Committee of Operators which controls all development and production activities in the unit area. (R. Ex. 7, P. 252-256, Incl.)

(2) The right to receive, in lieu of the oil and gas production from Petitioners' own wells, a fractional

percentage share of all the oil and gas produced from the unit area. (R. Ex. 7, P. 249-252, Incl.)

Socony-Mobil Oil Company, Inc., a private oil and gas producing company competitive to Petitioners, is designated the Operator of the unit area and all oil and gas development and producing operations therein. Thus an entity in the nature of a private monopoly has been created by the Order of the Commission. That private monopoly is permitted to exist and function under the State's sanction.

In lieu of their right of absolute control of their property, the Petitioners have been compelled to accept a percentage participation vote on an Operating Committee. Also, in lieu of their right to receive *all* oil and gas produced from their oil and gas leases, the Petitioners are compelled *to pool* their production with all other owners and accept a participation percentage in the total oil and gas production from all the unit area. This participation percentage is determined on the basis of two formulae which are not included in the Plan of Unitization or the Commission Order. Only the fractional percentages determined by the formulae to be applicable to each separately owned tract in the unit are included in the Plan. (R. Ex. 7, Ex. B, P. 276-285 Incl.)

The formula for determining the basis of participation in unit production which is challenged here is:

> From and after the first day of the month in which the cumulative total of 7,600,000 barrels of oil are produced the unit production is apportioned among the separately owned tracts in the ratio that the calculated net acre feet of productive sand under each tract bears to the total calculated net acre feet under all tracts in the unit area. (R. 75-76 Incl.)

Unless the net acre feet of sand attributed to each tract are of a "like value", or unless all of each tract to which unit production is allocated is underlain by net acre feet of sand which will contribute recoverable oil and gas to the unit production, discrimination results and those discriminated against have had substantial property rights taken from them in violation of their Federally protected rights, as guaranteed by the Federal Constitution, 14th Amendment.

The Order of the Commission so operates against these Petitioners.

REASON FOR GRANTING WRIT

Socony-Mobil Oil Company, Inc., the owner of oil and gas leases covering a substantial portion of the Tatums Field Unit, created as beforesaid, filed an Application (R. 4) with the Commission and asked that the Commission create the Tatums Field Unit for the pro-

duction of oil and gas. At the time of the hearing on said Application, Socony-Mobil Oil Company, Inc. was joined by others. All urged that the Commission approve the creation of the unit. The Jones Oil Company and the Trevlyn Oil Company opposed the creation of the unit.

The Tatums Field Unit, which is the subject of the order appealed from, consists of three separate oil and gas producing sands.

The Tatums Sand, discovered in 1927 (R. 60), and the Pennington Sands are the most prolific and are the most widespread throughout the unit area (R. 86). The Stray Sand is the least important of the three sands.

The oil and gas producing qualities of the three sands are extremely variable. *However, in the acre-foot*

The following tabulation briefly shows pertinent data with respect to each of the sands (R. 62 R. Exhibit 23, Page 455).

Sand	Avg. Depth, Feet	Max. Net Sand Thickness, Feet	Participating Area Acres	Participating Sand Volume Acre-Feet	Avg. Thickness Feet
Tatums	2400	137	2750	126,900.00	46.1
Stray	2600	19	540	3,402.5	6.3
Pennington	2800	34	570	9,115.0	16.0

formula for determining participation in unit production all sands were treated alike and as if each would produce the same amount of oil and gas as a result of the unit operation. This "like value for oil and gas producing purposes" is a fiction which has been attributed to each sand. The record is uncontroverted that the sands are of different quality and are *not* of like value. The

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In fact it is admitted (R. 91) by Mr. MacIvor (witness of Socony-Mobil Oil Company, Inc.) that each of the acre feet attributed to the separately owned tracts will not yield equal or equivalent volumes of secondary recovery oil.

"Q. Do you mean here when you say net effective feet that every foot would yield oil in some quantities or to what degree would they yield oil?

A. Well, the net effective feet here are those productive feet which we feel in this particular instance would contribute to a waterflood reserve.

Q. Would contribute to waterflood reserve?

A. Yes.

Q. Do you mean that they would contribute equally to the waterflood reserve or would merely contribute?

A. I doubt that they would contribute equally; I think that they would all make some contribution."

Further, he admits (R. 92) that "each foot would contribute differently".

erroneous assignment to each of "like value for oil and gas producing purposes" was elevated to the force of law by the Order of the Commission despite the fact that all evidence in the record bearing on the quality of the sands shows that there is considerable variation in the inherent qualities in the three sands. The result of the Commission's Order is to force Petitioners, who produce from the Tatums Sand only, which sand is the thickest, greatest in areal extent, contains the greatest sand volume and is the most prolific oil and gas producer, to

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R. Ex. 23, Page 458, points out the difference in these sands:

	Tatums Sand	Pennington
Porosity % of Sand Volume	22.5%	19.8%
Permeability	383 (mean)	274 (mean)
INTERSTITIAL water saturation, % of pore space	17%	20%
Viscosity (average)	40	70

No data are available for the Stray Sand. R. Ex. 23, Page 459.

Remaining oil in place recoverable by waterflooding assuming 100 percent volumetric sweep efficiency was estimated at 603.5 barrels per acre foot for Tatums Sand and 543.2 barrels per acre foot for Pennington Sand. R. Ex. 23, Page 463. Because of evidence of high viscosity oil in the Stray Sand, *no* waterflood reserves were attributed to that sand. R. Ex. 23, Page 461.

give up their superior production to owners of the Pennington Sand, which is inferior in quality and to the owners of the Stray Sand, which, according to Socony-Mobil Oil Company Inc.'s own report, does not contain any expected recoverable oil and gas.

There is no doubt that the acre feet used in arriving at the participation percentages in unit production are not of like value. Therefore, each tract has a different value for oil and gas purposes. The Commission treated all tracts as being the same and of like value. A

From the foregoing that the Tatums Sand has a higher porosity thus can contain more oil, has a higher permeability and thus can yield oil more readily, has a lower interstitial water percentage, and thus has more porosity volume to contain oil, and a lower viscosity and thus the oil can be produced more readily. Also note specifically *that there are no data available on the Stray Sand*. Thus, the sands, as such, on which data are available are not capable, and the production from each of the sands has demonstrated throughout the record that such is true, of producing and yielding oil on a relatively equal basis.

R. Ex. 28 demonstrates that the Trevelyn Oil Company's Mitchell Lease had a current value for oil and gas producing purposes during the base period July 1,

tract which contributes an acre foot of Stray Sand is not contributing a like value when compared with a tract contributing an acre foot of the Tatums Sand. The record shows definitely and without equivocation

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Continued

1959 to December 31, 1959, the period upon which the primary formula is based, of 13.8 barrels per well per day, sixteen of the leases had a value for oil and gas producing purposes from 1.10 barrel to 1.7 barrels per well per day. Only eight other leases in the entire unit area had a higher value for oil and gas producing purposes on the number of barrels per well per day being produced then did the Mitchell lease (R. Ex. 28)

R. 97 — Mr. MacIvor, (witness for Socony-Mobil Oil Company, Inc.) had the following to say with respect to the Stray Sand:

"Q. Now, what is the quality of this Stray Sand and how much waterflood oil do you expect to get out of it?

A. Well, my testimony is going to be in conflict with this report. I don't know how much. The report states that there's a high viscosity in what was considered to be the Stray sand here. *They didn't contribute any waterflood reserves to the recoverable oil out of it.* We know, from our experience and production practice, that the Stray sand produced oil when it was penetrated and perforated. I don't know what the gravity of the oil was; I don't know what the viscosity was. I do know that oil came out of the sand; and even though it has a relatively higher viscosity, *I suspect that we will probably be able*

that there is no basis for assigning any value to an acre foot of Stray Sand for oil and gas producing purposes.

Continued

to effectively sweep the reservoir of some waterflood oil. How much, I don't know.

Q. *In any event*, the committee was of the opinion that of the three sands *the Stray sand was of the least quality* from the standpoint of producing recoverable oil?

A. I think that's correct."

R. 98 — Mr. MacIvor (witness for Socony-Mobil Oil Company, Inc.) testified that including the Stray Sand would create an inequity:

"Q. And in the acre foot formula that you have you've treated every acre foot just as if it were an acre foot; there's no temporizing or any weighting of the acre feet for quality at all?

A. No, there's no quality weighting whatsoever.

Q. So that now, if as a matter of fact the report as such is more nearly correct and there's not going to be any waterflood oil of any consequence at all coming out of the Stray sand, what would be the result as to the Pennington and the Tatums sand owners in the allocation of the unit production?

A. Well, if the report is correct, *I think it work an inequity.*"

The report (R. Ex. 28) must be presumed to be correct; it was prepared by Socony-Mobil Oil Company, Inc.

In addition, *all* of the acre feet included for calculating percentage of participation will not contribute oil to unit production under waterflooding operations. An acre foot which does not contain any producible oil does not have a like value when compared with an acre foot which will contribute substantial recoverable unit production.

Within the unit area each separately owned tract's equitable and reasonable share of the unit production must be measured by the *value* of each such tract for oil and gas producing purposes and by it "contributing *value* to the unit *in relation to like values of other tracts in the unit*" as required by Sub-Sec. (b), Sec. 287.4, Title 52 O. S., 1961. (Appendix D). In reaching the conclusion that there had been no discrimination against the Petitioners, the Commission and the Oklahoma Supreme Court have completely ignored the record in this case. Under the circumstances, it is within the province of the Federal Court to inquire therein, and correct the error which has been made. In *Norris v. Alabama*, 294 U. S. 587, 589, 590; 79 L. ed. 1074; 55 S. Ct. 579; Mr. Chief Justice Hughes speaking for the Court, stated:

> "That the question is one of fact does not relieve us of the duty to determine whether in truth a federal right has been denied. When a federal right has been especially set up and claimed in a state

court, it is our province to inquire not merely whether it was denied in express terms but also whether it was denied in substance and effect. If this requires examination of the evidence, that examination must be made. Otherwise, review by this Court would fail of its purpose in safeguarding constitutional rights. Thus, whenever a conclusion of law of a State Court as to a federal right and findings of fact are so intermingled that the latter control the former, it is incumbent upon us to analyze the facts in order that the appropriate enforcement of the federal right might be assured."

An acre foot is merely a volume measurement. Each acre foot is the same volume, whether located in the unit area or in China. Each acre foot is 43,560 cubic feet. In this unit area that is where the "like value" aspect of each acre foot ends. Any distribution of unit production upon an acre foot basis without giving weight to the quality of each acre foot for oil and gas producing purposes is merely a distribution of unit production in relation to the volume of the sand. In this unit there has been no correction or weighing for quality.

The Statute, Sub-Sec. (1), Sec. 287.4, Title 52, Oklahoma Statutes, (Appendix D) does not state that the distribution of unit production shall be made on the basis of equal volumes of sand. The Statute requires that each separate tract be assigned participation in unit production on the basis of its value for oil and gas pro-

ducing purposes when related to the like contributing values of other tracts in the unit area.

The distribution of the unit production on acre feet assumes and concludes that all acre feet have the same characteristics, have the same amount of recoverable oil therein, have the same porosity, are at the same pressure, contain the same viscosity oil, have the same permeability, are capable of containing and yielding the same quantity of oil, and will respond exactly the same to each and every method of unitized operations.

Mr. MacIvor (witness for Socony-Mobil Oil Company, Inc.) (R. 100) and again (R. 101) and again R. 102).

"Q. Let me ask you this: Did you calculate the net effective pay thickness out to the unit boundary?

A. Yes.

Q. All the way around?

A. Yes.

Q. You took into consideration all of the tracts and then you took into consideration all of the net acre feet under all of the tracts?

A. That's correct.

Q. So that if a tract is an edge tract it got full credit for all of the net acre feet in the formula?

The lack of sameness or "like value" among the sands is very pronounced with respect to the Stray Sand, which, admittedly, contains 3,402.5 acre feet or 2.44% of the total acre feet in the unit area. Further, the lack of sameness or "like value" is extremely pronounced in that 13,600 acre feet, representing approximately 10% of the total acre feet in the unit area, will not contribute any waterflood production to the unit area. Yet these 13,600 acre feet participate in the unit production on an equal basis with acre feet which will contribute substantial quantities of oil to unit production.

"Like value" under the plain import of the Statute, indicates that the values must be the same; that the

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Continued

A. That's correct.

Q. Now, what percentage of, let us say, the Tatums sand as such will not be floodable? Do you know? You have apparently made some study of that or at least you've discussed it, I presume.

A. No, I don't know the answer to that, specifically.

Q. Well, let me ask you this; as an engineer: Will all of the Tatums sand be flooded 100 per cent?

A. No, I don't think so."

values must be identical; that one value must duplicate the other value; that one value must be indistinguishable from the other; that one value would be the same in appearance, quality, or characteristics as another value; that the values would have the same basis of comparison and that such values would be the same in character or degree.

None of these tests are inherent in the oil and gas producing characteristics of any of the sands. This statement is apparent when the record is viewed completely

When viewed from the standpoint of the foregoing, the acre foot basis of participation in unit production inherently reflects only the "unlike values" used by Socony-Mobil Oil Company, Inc. in proposing the participation formula.

The separately owned tracts of the Petitioners have no Stray Sand and a minimum, if any, of non-floodable acreage. That portion of unit production which, but for the inclusion of the Stray Sand and the non-floodable acreage would be distributed to Petitioners' separately owned tracts, is being distributed to the Socony-Mobil Oil Company, Inc., and others who have the Stray Sand and the non-floodable acreage. This is discrimination and taking property without due process of law.

This is taking from those who have and giving to those who have not.

The record is clear:

1. The record admits that the Tatums Sand is the best sand.

2. The record admits that the Tatums sand is more sensitive than all the other sands.

3. The record admits that there is no reliable data on the Stray Sand.

4. The record admits that an acre foot of Tatums Sand is better than an acre foot of Pennington Sand or Stray Sand.

5. The record admits that the Tatums Sand has more oil in place initially than the other sand.

6. The record admits that, despite the fact that there is no reliable data on the Stray Sand, there is assigned to the Stray Sand the same estimated waterflood recovery as there is assigned to the Tatums Sand.

7. The record admits that there are a substantial number of acre feet in the unit area which are given participation which are not floodable and will not contribute recoverable oil to the unit production.

8. The record admits, that despite the lack of like values inherent in each of the three sands, each acre foot of each sand is given equal value in the formula for distributing unit production.

The Fourteeenth Amendment to the Federal Constitution protects property of private citizens from confiscation by the act of the Legislature or by a commission to which legislative regulatory power has been delegated. *State v. Lone Star Gas Co.*, Tex. Civ. App. (1935), 86 S.W. 2d 484, reversed on other grounds, *Lone Star Gas Co. v. State of Texas* (1938), 58 S. Ct. 883, 304 U. S. 224, 84 L. Ed. 1304, rehearing denied (1938), 58 S. Ct. 1050, 304 U. S. 590, 82 L. Ed. 1549.

Rights that exist to any tract in a class, exist to all tracts in the same class. Under the Oklahoma Compulsory Unitization Act no tract should be favored, no tract should be discriminated against. The granting of unit production which rightfully belongs to Petitioners' tracts to the other tracts as a matter of right arbitrarily discriminates, takes the Petitioners' property without due process and denies equal protection of the laws. *Truax v. Corrigan*, 257 U. S. 312, 332, 333; 66 L. ed. 254; 42 S. Ct. 124; *Phillips Petroleum Co. v. Peterson*, 218 F. 2d 926, 933, 934, (10th C. 1954); *Bolling v. Sharpe*, 347 U. S. 497, 499; 98 L. ed. 884, 886; 74 S. Ct. 693; *Frost v. Corporation Commission of Oklahoma*, 287 U. S. 515, 522; 72 L. ed. 483, 488; 49 S. Ct. 235; *Louisville Gas & Electric Co. v. Coleman*, 277 U. S. 32, 37; 72 L. ed. 770, 774; 48 S. Ct. 423; *Maxwell v. Bugbee*, 250 U. S.

525, 543; 63 L. ed. 1124, 1132; 40 S. Ct. 2; *Southern R. R. Co. v. Greene*, 216 U. S. 400, 412; 54 L. ed. 536, 539; 30 S. Ct. 287.

For a long time the Commission and the Supreme Court of Oklahoma have been guided by *Grison Oil Corporation v. Corporation Commission*, 186 Okl. 548, 99 P. 2d 134, where the Oklahoma Court announced the following principles:

"The prevention of waste by application of governmental power and supervision recognized the interest of the state in the preservation and proper usage of an exhaustable natural resource of inestimable value to the general welfare of the people as a whole. It is therefore justified upon invocation of the police power of the state. *Sterling Refining Co. et al. v. Walker et al.* 165 Okl. 45, 47, 48; 25 P. 2d 312, 315. But private rights are also involved in the application of this power. While they may yield their *reasonable exercise*, it is not contemplated that they be annihilated thereby, or that they be interfered with to any greater extent than is reasonably required by a proper exercise of the police power, with due consideration of the legitimate object to be accomplished."

In the case at bar the rights of these Petitioners have been annihilated.

CONCLUSION

For the reasons stated, the Petitioners respectfully pray that the Writ of Certiorari be granted.

Respectfully submitted,

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September, 1963

APPENDIX A

JONES OIL COMPANY and Trevlyn Oil Company,
Plaintiffs in Error,

VERSUS

CORPORATION COMMISSION of Oklahoma et al.,
Defendants in Error

No. 40015

Supreme Court of Oklahoma.

May 14, 1963

Rehearing Denied June 18, 1963.

SYLLABUS BY THE COURT

1. The police power of the state extends to defining the correlative rights of owners in a common source of oil and gas supply, providing for the management, operation and further development of such common source of supply.

2. The Unitization Act, 52 O.S. 1961, §§ 287.1 to 287.15, is not violative of Article II, §§ 7, 23 and 24 of the Oklahoma Constitution or of the Fourteenth Amend

ment of the Constitution of the United States.

3. Order No. 47677 of the Corporation Commission is not contrary to either the law or the evidence.

Appeal from an order of the Corporation Commission creating the Tatums Field Unit in Stephens County, Oklahoma on the application of Socony Mobil Oil Company, Inc. et al. and adopting a plan of unitization applicable thereto. Jones Oil Company and Trevlyn Oil Company are plaintiffs in error and the Corporation Commission of the State of Oklahoma, Texaco, Inc., Phillips Petroleum Company, Shell Oil Company, The Hefner Company, Kerr-McGee Oil Industries, Inc., Schermerhorn Oil Corporation and Socony Mobil Oil Company, Inc., are defendants in error. Affirmed.

Barth P. Walker, Walker & George, Oklahoma City, for plaintiffs in error.

Ferrill H. Rogers, Oklahoma City, for Corporation Commission.

Fisher Ames, Oklahoma City, for Texaco, Inc.

Cecil Hamilton, Oklahoma City, for Phillips Petroleum Co.

Gordon Watts, Oklahoma City, for Shell Oil Co.

Robert A. Hefner, Jr., Oklahoma City, for the Hefner Co.

Francis Irvine, Oklahoma City, for Kerr-McGee Oil Industries, Inc.

R. A. Huffman, Lupardus, Holliman & Huffman, Tulsa, for Schermerhorn Oil Corp.

Roberts W. Richards, Oklahoma City, C. B. Wallace, Ross Madole, Dallas, Tex., of counsel, for Socony Mobil Oil Co., Inc.

HALLEY, Vice Chief Justice:

On January 10, 1962, the Corporation Commission of Oklahoma entered Order No. 47677 in cause CD No. 15732 before it and approved the creation of the Tatums Field Unit in Stephens County. The applicants were Socony Mobil Oil Company, Inc., Texaco, Inc., Phillips Petroleum Company, Shell Oil Company, The Hefner Company, Kerr-McGee Oil Industries, Inc., Schermerhorn Oil Corporation, Jones Oil Company and Treylyn Oil Company protested the approval of the application and have appealed the denial of their protest and the creation of the Unit.

The Corporation Commission was proceeding under 52 O.S. 1961 §§ 287.1-287.15, The "Unitization Act."

There was a full hearing of the application by the Corporation Commission. It appears from the record that approximately four years prior to this hearing the

majority of oil and gas operators in the Tatums Field began the study of secondary recovery possibilities of this area which has been designated as the Tatums Field Unit. A total of 275 presently producing oil wells were drilled therein.

There were three producing sands in the area, Tatums, Stray and Pennington. Tatums was the greatest producer, Pennington next and then Stray. 61 wells produced in two or three sands. They are all three found in the Unit area.

It is estimated that 22,500,000 barrels of oil will be recovered by the secondary recovery operations.

The Unit area covers 3663 acres. Trevlyn Oil Company and Jones Oil Company, the protestants, owned leases covering only 150 acres or 4.7619 per cent of the Unit area. When the Plan of Unitization was circulated 83.3358 per cent of the lessees and 72.51116 per cent of the royalty owners approved the same. This is in excess of statutory requirements. 52 O.S. 1961 § 287.5.

The protestants raise seven Points as to the validity of Order No. 47677 and the Plan of Compulsory Unitization approved by it. We will discuss them in order.

[1] The first Point made is that the three oil producing sands that underlie the Unit areas, the Tatums, Stray, and Pennington, are not a common source of

supply but in fact three common sources of supply and for that reason cannot be joined in one unitization plan. With this contention we cannot agree. The fact remains that oil is being produced from these three sands through the same well bore. The evidence clearly shows that it would be uneconomical to make three separate units of these sands. To us it would violate the very reasons for unitization as set out in the first section of the Unitization Act passed in 1951, which is 52 O.S. 1961 § 287.1, and is as follows:

> "The Legislature finds and determines that it is desirable and necessary, under the circumstances and for the purposes hereinafter set out, to authorize and provide for unitized management, operation and further development of the oil and gas properties to which this Act is applicable, to the end that a greater ultimate recovery of oil and gas may be had therefrom, waste prevented, and the correlative rights of the owners in a fuller and more beneficial enjoyment of the oil and gas rights protected."

We can see nothing wrong in the Corporation Commission designating these three sands as a common source of supply as they did in Order No. 44384 on December 30, 1960, the 4th and 5th paragraphs of which are as follows:

"4. That since 1937 the wells on the above described lands, which were completed in two or more of said sands, have been operated as producing from one common source of supply and the production from all sands has been commingled in the well bore; that at the present time there are 61 such wells completed in and producing from two or more of said sands; that none of said wells were completed in such a manner that each sand is produced separately; that by reason of such commingling over this period of time said sands for all practical purposes and intents at this time constitute one common source of supply underlying the aforesaid lands; that it is not now economically feasible to separately produce each of said sands; that the said sands have the same general lithogical characteristics and the pressure in each of said sands is substantially the same; that the Tatum Stray and Pennington sands underlying the above described lands constitute one common source of supply; that in the event secondary operations should be deemed feasible it would be both impracticable and uneconomical to separately operate and produce each of said sands.

"5. That in the interest of securing the greatest ultimate recovery of oil or gas from the aforesaid Tatums, Stray and Pennington Sands, the prevention of waste therein, and the protection of correlative rights, this application should be granted."

For us to hold otherwise on this Point would violate the spirit of unitization. Protestants' Point I cannot be sustained.

[2, 3] Protestants' Points II and III are argued together and are as follows:

"II

"Order No. 47677, and the Plan of Compulsory Unitization approved by it, violates the limitations placed on the Commission by Title 52, Sec. 287.4, O.S., 1961, in that the division of interest or formula for apportionment and allocation of the unit production, among and to the separately owned tracts within the Unit Area, all as approved by said Order and Plan, fails to apportion or allocate to such tracts that portion of the unit production as will reasonably permit persons otherwise to share in or benefit by such production, to produce, or receive in lieu thereof, their fair, reasonable and equitable share of the Unit production or other benefits thereof."

"III

"Order No. 47677, and the Plan of Compulsory Unitization approved by it, violates the limitations placed on the Commission by Title 52, Sec. 287.4, O.S., 1961, in that the share of unit production allocated and apportioned to each separately owned tract by said Order and Plan is not the fair, equitable and reasonable share of unit production required by such statute and the share of unit production allocated and apportioned to each such tract is not measured by the value of each such tract for oil and gas purposes, and the contributing value of each such to the Unit in relation to like values of other tracts in the Unit, and does not take into account the factors which said statute requires."

We cannot agree that the Order and Plan of Unitization fails in the respects mentioned in Point II.

Neither can we say that the Order and Plan violates the limitations placed on the Commission by Statute.

The Plan of Unitization as approved by the Corporation Commission sets out the tract participation expressed in per cent of unit production as that participation is assigned to each of the several separately owned tracts in the Unit area. The method was set out in protestants' brief as follows:

> "* * * The tract participations in unit production were calculated from two formulae—one called the 'primary production formula', and the other the 'secondary recovery formula.'
>
> "The primary production formula is based upon 'current production' during the base period, July 1, 1959 through December 31, 1959. A separately owned tract's participation in primary unit production based on this formula is a percentage derived at by dividing an individual separately owned tract's cumulative production for the period before stated by the unit area cumulative production for the same period. This formula remains in full force and effect under the plan until, from and after January 1, 1960, a total of 7,600,000 barrels, the estimated total future primary oil has been produced.
>
> "On the first month following the month in which the 7,600,000 barrels of estimated future primary oil has been produced, then the 'secondary recovery formula' becomes effective. This formula would allocate unit production among and to the separately owned tracts on the basis of net acre feet of productive sand under each tract. In other words,

the total net acre feet in all of the sands estimated to be included within the unit boundary as shown by R. Ex. 19, 20 and 21 is the denominator of a fraction whose numerator is the amount of net effective sand under each separately owned tract. The total secondary unit production is then allocated upon the basis of the decimal fraction obtained from this relationship. The total participating sand volume in acre feet from all of the sands is 139,417.5 acre feet.

"The Tatums Sand contains 126,900 acre feet, or 91.02% of the total; the Stray Sand contains 3,402.5 feet or 2.44% of the total; and the Pennington Sand contains 9,115 acre feet, or 6.54% of the total."

We are of the opinion that there is nothing wrong with the formulas used. Certainly the base period, July 1, 1959, to December 31, 1959, was fair to all.

It would seem that the protestants think they have been treated unfairly because their wells on the Trevlyn Mitchell lease have produced so abundantly that they should have been given a greater percentage on both the future primary recovery and also the secondary recovery. The expert witness for the applicants very clearly showed there was no discrimination against protestants. We quote his testimony on this point as follows:

"The basis for allocating ownership among the various tracts within the Unit Area was keyed to what is known as a split formula. The remaining primary reserves were allocated on the basis of choosing, well, first on the basis of determining by

decline curve extrapolation the total remaining primary reserves to an economic limit of one point six eight barrels per day per well, the remaining primary reserves for the entire Unit Area, including all commingled sands. This was done on a decline curve basis, agreed and calculated from an Engineering Committee and recommended to the operators for their acceptance, which it was accepted. This remaining primary oil was allocated on the basis of a current production period, which covered a period of six months. * * * The last six months of 1959. * * * in other words, it was a current rate established for that period of time for the individual lease, and the share of the remaining seven million six hundred thousand barrels was allocated on the proportion that the current production had to the total production for the entire Unit Area under that six months period. That was the basis for establishing the primary portion of our split formula.

"The secondary portion of this formula was that portion which each lease was allocated on the basis of waterflooding for secondary recovery, was done on the basis of acre feet. That is to say, the sand thickness under any given lease, times the number of acres under that lease, gives the total number of acre feet under that lease and that lease participated in the waterflood reserve as it related as that number of acre feet related to the total number of acre feet in the entire Unit Area."

We believe that the formulas here were fair to all concerned and we find that there was substantial evidence to support the unitization formula for protestants'

percentage of participation. Producers Development Company v. Magna Oil Corporation, Okl., 371 P. 2d 702.

[4-6] The protestants discuss Points IV, V and VI together. We think Point VII could come under this discussion also. We set out these Points:

"IV

"Order No. 47677, and the Plan of Compulsory Unitization approved by it, are unreasonable, arbitrary and discriminatory and are not supported by substantial evidence.

"V

"Order No. 47677, and the Plan of Compulsory Unitization, as same are applied against these Plaintiffs in Error, are in violation of the due process of law clause contained in the Fourteenth Amendment to the Constitution of the United States and Section 7, Article II of the Constitution of the State of Oklahoma.

"Order No. 47677, and the Plan of Compulsory Unitization as approved by it, deny these Plaintiffs in Error equal protection of the laws guaranteed by the Fourteenth Amendment to the Constitution of the United States.

"VI

"Order No. 47677, and the Plan of Compulsory Unitization approved by it, constitute a taking of the property of these Plaintiffs in Error in viola-

tion of, and contrary to, Sections 23 and 24 of Article II of the Constitution of the State of Oklahoma.

"V

"Order No. 47677, and the Plan of Compulsory Unitization approved by it, in all material respects, are violative of Title 52, Secs. 287.1 to 287.15, both inclusive, O.S. 1961."

These contentions simply challenge the Order No. 47677 and Plan of Unitization as being unconstitutional under both State and Federal Constitutions.

We think these questions have been before us and decided adversely to protestants' contentions in Palmer Oil Corp. v. Phillips Petroleum Co., 204 Okl. 543, 231 P. 2d 997, certiorari denied, Palmer Oil Corp. v. Amerada Petroleum Corp., 343 U.S. 390, 72 S. Ct. 842, 96 L.Ed. 1022; Spiers v. Magnolia Petroleum Co., 206 Okl. 503, 244 P. 2d 843; Woody v. State Corp. Commission, Okl., 265 P. 2d 1102.

It clearly appears from the evidence in this case that by waterflooding under this Unitization Plan the protestants will recover far more oil than they would from primary recovery.

Under Article IX, § 20 of the Oklahoma Constitution, it is provided:

"* * * The Supreme Court's review of appealable orders of the Corporation Commission shall be judicial only, and in all appeals involving an asserted violation of any right of the parties under the Constitution of the United States or the Constitution of the State of Oklahoma, the Court shall exercise its own independent judgment as to both the law and the facts. In all other appeals from orders of the Corporation Commission the review by the Supreme Court shall not extend further than to determine whether the Commission has regularly pursued its authority, and whether the findings and conclusions of the Commission are sustained by the law and substantial evidence. Upon review, the Supreme Court shall enter judgment, either affirming or reversing the order of the Commission appealed from. * * *"

We have exercised our independent judgment as to both the law and the facts in this case and we think the Corporation Commission should be affirmed.

DAVISON, JOHNSON, WILLIAMS and JACKSON, JJ., concur.

BLACKBIRD, C. J., concurs in result.

WELCH and IRWIN, JJ., dissent.

APPENDIX B

Before The Corporation Commission Of The State Of Oklahoma

In The Matter Of The Petition Of Socony Mobil Oil Company, Inc. For Creation Of The Tatums Field Unit Having For Its Purpose The Unitized Management, Operation And Further Development Of The Common Source Of Supply Defined By Order No. 44384 And Underlying Certain Lands In Carter County, Oklahoma, The Defining Of The Unit Area Thereof And The Prescribing Of The Plan Of Unitization Applicable To Such Unit And Unit Area

Cause CD No. 15732

Order No. 47677

REPORT OF THE COMMISSION

10:00 o'clock a.m., and on said date and time came on for hearing in the Commission's Courtroom, Capitol Office Building, Oklahoma City, Oklahoma; Harold Freeman, Chairman, Ray C. Jones, Vice Chairman, and Wilburn Cartwright, Commissioner, sitting.

Robert W. Richards, attorney, appeared for the applicant, Socony-Mobil Oil Company, Inc.; Fisher Ames, attorney, appeared for Texaco Inc.; Cecil Hamilton, attorney, appeared for Phillips Petroleum Company; Gordon Watts, attorney, appeared for Shell Oil Company; William A. Scheurich, Jr., attorney, appeared for Schermerhorn Oil Corporation; Harry Hurd appeared for The Hefner Company, R. A. Hefner, Jr. appeared on behalf of himself and The Hefner Company; F. H. Hartman appeared for Beard Oil Company; Francis Irvine appeared for Kerr-McGee Oil Industries, Inc.; William Leach appeared for The Jones Oil Company; Barth T. Walker, attorney, appeared for Trevlyn Oil Company and The Jones Oil Company, and Ferrill H. Rogers, Conservation attorney, appeared for the Commission, and no other parties appeared.

The Commission proceeded to hear the testimony and statements of Counsel on December 7 and 8, 1961, and being fully advised in the premises, finds:

FINDINGS

1. That this is an application of Socony-Mobil Oil Company, Inc., for the unitization of the common source of supply of oil and gas consisting of the Tatums, Stray and Pennington Sands underlying the lands hereinafter described in Carter County, Oklahoma, pursuant to the provisions of Section 287.1 to 287.15, inclusive, Title 52 Oklahoma Statutes 1951 (same being Senate Bill 203 of the 1951 Oklahoma Session Laws).

2. That notice of the hearing of said application has been duly and properly given in all respects as required by law, and the Commission has jurisdiction of the subject matter and of the persons interested therein, and has jurisdiction to enter the order hereinafter set forth, and the Commission finds generally that all of the material allegations of the application filed herein are true and correct and are supported by evidence.

3. That the applicant, Socony-Mobil Oil Company, Inc., is presently and was at the time the application herein was filed the owner of valid and subsisting oil and gas leases covering lands within the area sought to be unitized herein; that the area which applicant desires to unitize under the provisions of the law referred to above consists of the following described tracts of land in Carter County, Oklahoma, to-wit:

W 2 SW 4 and SW 4 NW 4 and S 2 NW 4 NW 4 and NW 4 NW 4 NW 4 of Section 19, Township 1 South, Range 2 West; and

SE 4 SE 4 SE 4 of Section 10; and S 2 SW 4 SW 4 of Section 11; and SW 4 NW 4 and W 2 NW 4 SW 4 and SW 4 SW 4 and W 2 SE 4 SW 4 and SE 4 SE 4 SW 4 and SW 4 SW 4 SE 4 of Section 13; and S 2 and SE 4 NE 4 and S 2 SW 4 NE 4 and SE 4 SE 4 NW 4 and W 2 NW 4 and W 2 E 2 NW 4 of Section 14; and SE 4 and E 2 E 2 SW 4 and NW 4 NE 4 SW 4 and S 2 NE 4 and SE 4 NW 4 NE 4 and NE 4 NE 4 and SE 4 NW 4 and SW 4 NE 4 NW 4 and E 2 SW 4 NW 4 and SW 4 NW 4 of Section 15; and E 2 NE 4 and NW 4 NE 4 and N 2 SW 4 NE 4 and SE 4 SW 4 NE 4 and NE 4 SE 4 and NE 4 SE 4 SE 4 of Section 22; and N 2 and SE 4 and E 2 SW 4 and NW 4 SW 4 and N 2 SW 4 SW 4 of Section 23; and all of Section 24; and NW 4 NW 4 NW 4 of Section 25; and N 2 NE 4 NE 4 and NE 4 NW 4 NE 4 of Section 26, Township 1 South, Range 3 West, all in Carter County, Oklahoma,

which lands are delineated upon a plat which is attached to the Plan of Unitization, filed with the application herewith, and designated as Exhibit "A"; said lands are herein after referred to as "Unit Area." Said plat showing the 85 separate tracts comprising the Unit Area is adopted and made a part hereof by reference thereto.

4. The Commission finds that the unit area hereinabove described is underlaid by a common source of

supply of oil and gas consisting of the Tatums, Stray, and Pennington Sands; that the portion of said common source of supply underlying and within the unit area has been defined and determined to be productive of oil and gas by actual drilling operations; and that said Tatums, Stray and Pennington Sands underlying the unit area have heretofore been determined to be and designated as a common source of supply of oil and gas by this Commission in Order No. 44384 issued in Cause C.D. No. 14439.

5. The Commission finds that the unitized management, operation and further development of said common source of supply, or the portion thereof involved, is reasonably necessary in order to effectively carry on pressure maintenance or repressuring operations, cycling operations, water flooding operations, or any combination thereof, or any other form of joint effort calculated to substantially increase the ultimate recovery of oil and gas from said common source of supply; that one or more of said unitized methods of operation as applied to such common source of supply or portion thereof are feasible, will prevent waste and will, with reasonable probability, result in the increased recovery of substantially more oil and gas from said common source of supply than would otherwise be recovered; that the esti-

mated additional cost of conducting such operations will not exceed the value of the additional oil and gas so recovered.

6. The Commission further finds that this proposed unit and the adoption of one or more of such unitized methods of operation is for the common good and will result in the general advantages of the owners of the oil and gas rights within said common source of supply or portion thereof directly affected.

7. The Commission further finds that the size and shape of the unit area is such as may be reasonably required for the successful and efficient conduct of the unitized method or methods of operation for which the unit is created, and that such unit and the conduct of unitized operations thereunder will have no material adverse affect upon the remainder of such common source of supply.

8. The Commission further finds that the Plan of Unitization attached to the application filed herein and presented to the Commission for approval, and which is made a part hereof by reference thereto, is suited to the needs and requirements of this particular unit designated in said Plan as the TATUM-FIELD UNIT; that the terms and provisions of said Plan of Unitization are adequate and are proper to effectuate

and accomplish the purposes of the statute hereinabove referred to; that said Plan contains fair, reasonable and equitable provisions for: (a) the efficient unitized management or control of the further development and operation of the unit area for the recovery of oil and gas from the common source of supply affected; (b) the division of interest or formula for the apportionment and allocation of the unit production among and to the several separately owned tracts within the unit area such as will reasonably permit persons otherwise entitled to share in or benefit by the production from such separately owned tracts to produce or receive, in lieu thereof, their fair, equitable and reasonable share of the unit production or other benefits thereof; (c) the manner in which the unit and the further development and operation of the unit area shall or may be financed, and the basis, terms and conditions on which the cost and expense thereof shall be appropriated among and assessed against the tracts and interests made chargeable therewith, including a detailed accounting procedure governing all charges and credits incident to such operations; (d) the procedure and basis upon which wells, equipment and other properties of the several lessees within the unit area are to be taken over and used for unit operations, including the method of arriving at the

compensation therefor or of otherwise proportionately equalizing or adjusting the investment of the several lessees in the project as of the effective date of unit operations arried on by it, together with the creation to have general overall management and control of the unit and the conduct of its business and affairs and the operations carried on by it, together with the creation or designation of such other subcommittees, boards or officers to function under authority of the operating committee as may be necessary, proper or convenient in the efficient management of the unit, defining the powers and duties of all such committees, boards or officers, and prescribing their tenure and time and method for their selection; (f) the time when the Plan of Unitization shall become and be effective; (g) the time when and conditions under which and the method by which the Unit shall or may be dissolved and its affairs wound up.

9. It is further the finding of the Commission that the application herein, and the Plan of Unitization presented for approval, conforms to and comply with the requirements of Sections 287.1 to 287.15, both inclusive, Title 52 O.S. 1951, and that said Plan of Unitization has been signed, ratified and approved in writing by lessees of record owning more than 83.33587% of the unit

area affected thereby and by owners of record of 72.5116% (exclusive of royalty interests owned by lessees or by subsidiaries of any lessee) of the normal 1/8 royalty interest in and to the unit area, and the order of the Commission entered in this cause may become effective immediately.

ORDER

IT IS THEREFORE ORDERED by the Corporation Commission of the State of Oklahoma, as follows:

1. That the application filed herein be and the same is hereby granted.

2. That the Tatums Field Unit is hereby created for the common source of supply of oil and gas described above in accordance with the terms, provisions and conditions of the Plan of Unitization attached to the application herein.

3. That the Plan of Unitization attached to the application herein is made a part of this order by reference thereto and is hereby approved; and such Plan of Unitization shall constitute the Plan of Unitization in and for said TATUMS FIELD UNIT and the unit area of said unit, all to the same extent and with the same force and effect as if copied herein in its entirety.

4. That the unit area of the unit so created shall include all of the lands which are hereinabove described, being tracts numbered from 1 to 85, inclusive, on the plat marked Exhibit "A" attached to the Plan of Unitization approved by this order.

5. That each of such eighty-five (85) tracts in the unit area shall become, subject to the terms and provisions of the Plan of Unitization, participants in the unit production and in the other benefits and burdens of the unit in accordance with the provisions of the Plan of Unitization herein approved.

6. The Unit and the unit operator shall, from time to time, make such reports to the Commission concerning the operation of the unit area as may be requested by the Commission.

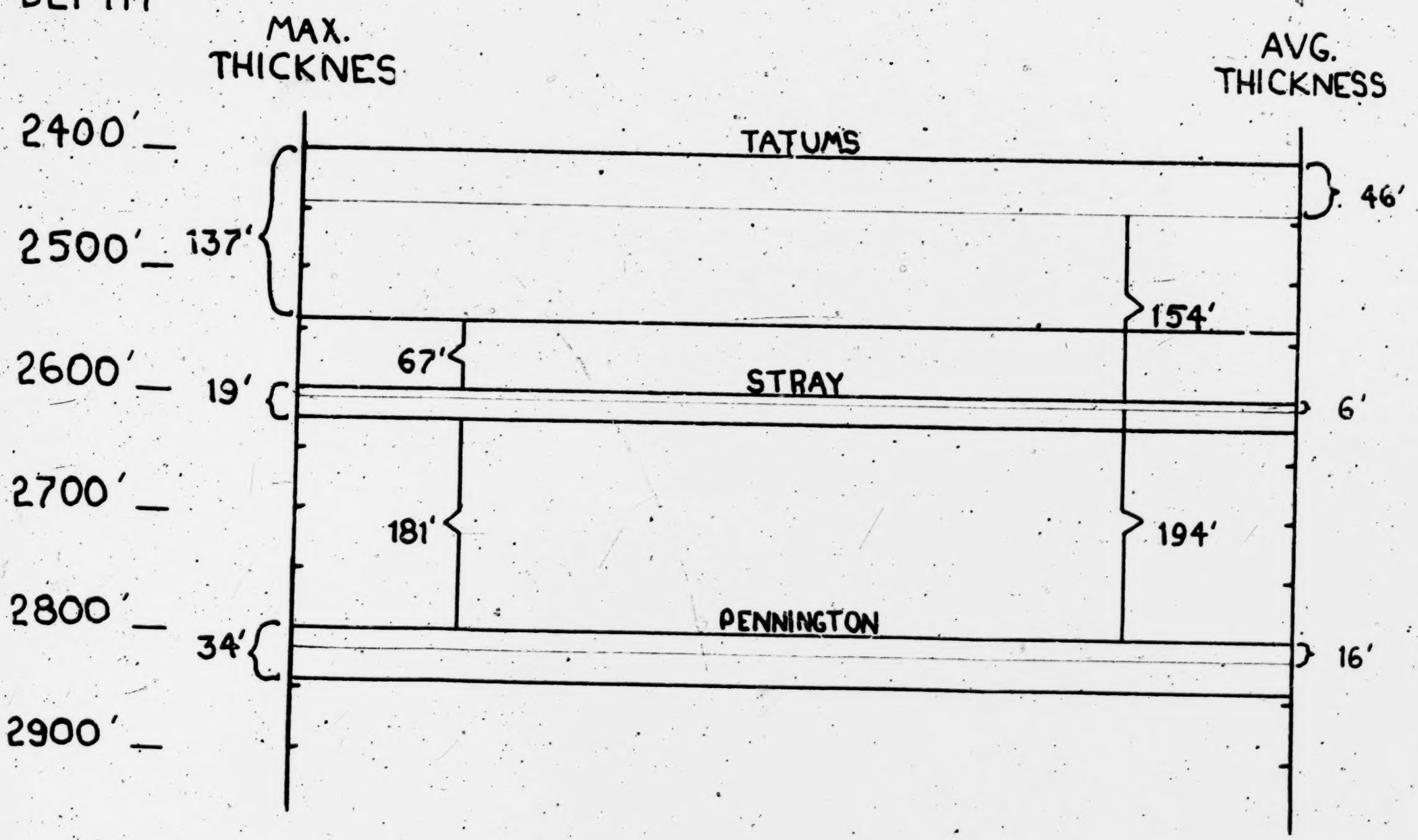
7. The Commission retains continuing jurisdiction over said unit for the purpose of amending, modifying, and interpreting the terms and provisions of this order and the Plan of Unitization of said unit.

DONE AND PERFORMED this 10 day of January, 1962.

CORPORATION COMMISSION OF OKLAHOMA
Harold Freeman, Chairman
Ray C. Jones, Vice Chairman
Wilburn Cartwright, Commissioner

ATTEST:
Carl B. Mitchell
Secretary

APPENDIX C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MAX.
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46'
154'
67'
STRAY
19'
6'
181'
194'
PENNINGTON
34'
16'

CONSTITUTIONAL AND STATUTORY PROVISIONS AND RULES INVOLVED

APPENDIX D

PAGE

Amendment XIV, Sec. 1, Constitution of the United States 49

Oklahoma Constitution: Article II, Secs. 7, 23, 24. Denial of due process etc. 49

Article IX, Sec. 20, appeal involving Federal Rights, the Court"*"shall exercise its own independent judgment as to both law and facts"*" 49

52 Oklahoma Statutes Ann: Sec. 287.1, Legislative Finding 50

Sec. 287.2, Limitation of Commission 50

Sec. 287.3, Requirement of Petition 50

Sec. 287.4, Order - Units and Unit Area —Plan of Unitization 52

Sec. 287.8, Status and Powers of units Liability for expenses, liens 54

APPENDIX D

CONSTITUTIONAL AND STATUTORY PROVISIONS AND RULES INVOLVED

A. Amendment XIV, to the Constitution of the United States, Sec. 1:

"***No State shall make or enforce any law which shall abridge the privileges and immunities of citizens of the United States, nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction to equal protection of the law."

B. Constitution of the State of Oklahoma, Article II: Section 7. "No person shall be deprived of life, liberty or property without due process of law."

Sec. 23. "No property shall be taken or damaged for private use, with or without compensation, unless by consent of the owner***"

Sec. 24. "Private property shall not be taken or damaged for public use without just compensation***"

Constitution of the State of Oklahoma, Article IX: Sec. 20. "The Supreme Court's review of appealable orders of the Corporation Commission shall be judicial only and in all appeals involving an asserted violation of any right of the parties under the Constitution of the United States or the Constitution

of the State of Oklahoma, the Court shall exercise its own independent judgment as to both the law and the facts***"

C. 52 Oklahoma St. Ann., as follows:

287:1 Legislative Finding

The Legislature finds and determines that it is desireable and necessary, under the circumstances and for the purposes hereinafter set out, to authorize and provide for unitized management, operation and further development of the oil and gas properties to which this Act is applicable, *to the end that a greater ultimate recovery of oil and gas may be had therefrom, waste prevented, and the correlative rights of the owners in a fuller and more beneficial enjoyment of the oil and gas rights protected.*

287.2 Power and Authority of the Commission

Subject to the limitations of this Act the Corporation Commission of the State of Oklahoma, hereinafter referred to as the "Commission", is hereby vested with jurisdiction, power and authority, and it shall be its duty to make and enforce such orders and do such things as may be necessary or proper to carry out and effectuate the purposes of this Act.

287.3 Matters to be Found by Commission — Requisites of Petition

If upon the filing of a petition therefor and after notice and hearing all in the form and manner and in accordance with the procedure and requirements hereinafter provided, the Commission shall find (a) that the unitized management, operation and further development of a common source of supply of oil and gas or portion thereof is reasonably necessary in order to effectively carry on pressure-maintenance or repressuring operations, cycling operations, water flooding operations, or any combination thereof, or any other form of joint effort calculated to substantially increase the ultimate recovery of oil and gas from the common source of supply; and (b) that one or more of said unitized methods of operations as applied to such common source of supply or portion thereof are feasible, will prevent waste and will with reasonable probability result in the increased recovery of substantially more oil and gas from the common source of supply than would otherwise be recovered; and (c) that the estimated additional cost of any of conducting such operations will not exceed the value of the additional oil and gas so recovered; and (d) that such unitization and adoption of one of more of such unitized methods of operation is for the common good and will result in the general advantage of the owners of the oil and gas

rights within the common source of supply or portion thereof directly affected, it shall make a finding to that effect and make an order creating the unit and providing for the unitization and unitized operation of the common source of supply or portion thereof described in the order, *all upon such terms and conditions as may be shown by the evidence to be fair, reasonable, equitable and which are necessary or proper to protect, safeguard and adjust the respective rights and obligations of the several persons affected*, including royalty owners, owners of overriding royalties, oil and gas payments, carried interests, mortgagees, lien claimants and others as well as the lessees. The petition shall set forth a description of the proposed unit area with a map or plat thereof attached, *must allege the existence of the facts required to be found by the Commission as hereinabove provided* and shall have attached thereto a recommended plan of unitization applicable to such proposed unit area and which the petitioner or petitioners consider to be fair, reasonable and equitable. (Emphasis added)

Sec. 287.4 Order — Units and Unit Area — Plan of Unitization.

"The plan of unitization for each such unit and unit area shall be fair, reasonable and equitable

quirements of the particular unit dependent upon the facts and conditions found to exist with respect thereto. In addition to such other terms, provisions, conditions and requirements found by the Commission to be reasonably necessary or proper to effectuate or accomplish the purpose of this Act, and subject to the further requirements hereof, each such plan of unitization shall contain fair, reasonable and equitable provisions for: * * *

"* * * (b) The division of interest or formula for the apportionment and allocation of the unit production among and to the several separately owned tracts within the unit area such as will reasonably permit persons otherwise entitled to share in or benefit by the production from such separately owned tracts to produce or receive in lieu thereof their fair, equitable and reasonable share of the unit production or other benefits thereof. A separately owned tract's fair, equitable and reasonable share of the unit production shall be measured by the value of each such tract for oil and gas purposes and its contributing value to the unit in relation to like values of other tracts in the unit, taking into account acreage, the quantity of oil and gas recoverable therefrom, location on structure, its probable productivity of oil and gas in the absence of unit operations, the burden of operations to which the tract will most likely be

subjected, or so many of said factors or such other pertinent engineering, geological, or operating factors, as may be reasonably susceptible of determination. Unit production as that term is used in this Act shall mean and include all oil and gas produced from a unit area from and after the effective date of the order of the Commission creating the unit regardless of the well or tract within the unit area from which the same is produced.***"

Sec. 287.8 Status and powers of unit — Liability for expenses — Liens

"Each unit created under the provision of this Act shall be a body politic and corporate, capable of suing, being sued and contracting as such in its own name. Each such unit shall be authorized on behalf and for the account of all the owners of the oil and gas rights within the unit area, without profit to the unit, to supervise, manage and conduct the further development and operations for the production of oil and gas from the unit area, pursuant to the powers conferred, and subject to the limitations imposed by the provisions of this Act and by the plan of unitization.

The obligation or liability of the lessees or other owners of the oil and gas rights in the several separately-owned tracts for the payment of unit expense shall at

all times be several and not joint or collective and in no event shall a lessee or other owner of the oil and gas rights in the separately-owned tract be chargeable with, obligated or liable, directly or indirectly, for more than the amount apportioned, assessed, or otherwise charged to his interest in such separately-owned tract pursuant to the plan of unitization and then only to the extent of the lien provided for in this Act."***

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In the

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1963

No. 459

JONES OIL COMPANY and TREVLYN OIL COMPANY,
Petitioners,

VERSUS

THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA; SOCONY MOBIL OIL COMPANY, INC., TEXACO, INC., PHILLIPS PETROLEUM COMPANY, SHELL OIL COMPANY, SCHERMERHORN OIL CORPORATION, THE HEFNER COMPANY, BEARD OIL COMPANY and KERR-McGEE OIL INDUSTRIES, INC.,
Respondents.

RESPONSE TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF OKLAHOMA

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October, 1963.

UTTERBACK TYPESETTING CO., 13 SO. WALKER, OKLAHOMA CITY, PH. CE 5-8750

INDEX

	PAGE
Statement	1
Argument	2
Conclusion	15

AUTHORITIES CITED

CASES:

Anderson-Prichard Oil Corp. v. Corporation Commission, 241 P.2d 363, appeal dismissed, 72 S. Ct. 562, 342 U.S. 938, 96 L. Ed. 698 — 15

Anderson v. Corporation Commission, 327 P.2d 699, appeal dismissed, 79 S. Ct. 536, 358 U.S. 642, 3 L. Ed. 567 — 15

Denver Producing & Refining Co. v. State, 199 Okla. 171, 184 P.2d 961 — 9, 11-12

Palmer Oil Co. v. Amerada Petroleum Corporation, et al. (consolidated with Kit C. Farwell v. Amerada Petroleum Corporation, et al.), 231 P.2d 997, cert. den., 343 U.S. 390, 96 L. Ed. 1022, 72 S. Ct. 842 — 6, 6-7

Patterson v. Stanolind Oil & Gas Co., 77 P.2d 83, appeal dismissed, 59 S. Ct. 259, 305 U.S. 376, 83 L. Ed. 231 — 14-15

Railroad Commission of Texas v. Rowan, 310 U.S. 573, 60 S. Ct. 1021, 84 L. Ed. 1368 — 9-10

Stanolind Oil & Gas Co. v. West Edmond Hunton Lime Unit, 193 F.2d 818, cert. den., 343 U.S. 920, 96 L. Ed. 1333 — 6

Woody v. State Corporation Commission, 265 P.2d 1102 — 7-8, 8-9

INDEX CONTINUED

PAGE

STATUTES:

52 O.S. 1961, Sec. 87.1 14
52 O.S. 1961, Secs. 287.1-287.15 2
52 O.S.A., Secs. 287.1-287.15 2

CONSTITUTIONAL PROVISIONS:

Oklahoma Constitution, Art. IX, Sec. 20 5-6
Constitution of the United States 14th Amendment 6

In the

Supreme Court of the United States

OCTOBER TERM, 1963

No. 459

JONES OIL COMPANY and TREVLYN OIL COMPANY,
Petitioners,

VERSUS

THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, SOCONY MOBIL OIL COMPANY, INC., TEXACO, INC., PHILLIPS PETROLEUM COMPANY, SHELL OIL COMPANY, SCHERMERHORN OIL CORPORATION, THE HEFNER COMPANY, BEARD OIL COMPANY and KERR-McGEE OIL INDUSTRIES, INC.,
Respondents.

RESPONSE TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF OKLAHOMA

Under the Conservation laws of the State of Oklahoma the Respondents and many other oil and gas lessees, with the approval of the Oklahoma Corporation Commission, formed the Tatums Field Unit in order to recover an estimated additional 22,500,000 barrels of oil by unitized secondary recovery operations—oil which will otherwise remain underground because it cannot be recovered by primary production methods. The two Petitioners, who own oil and gas leases covering only 150 acres out of the unit area of 2,750 acres, have opposed the creation of this unit.

This Plan of Unitization, prior to presentation to the Oklahoma Corporation Commission, was approved by 83.3358 per cent of the lessee operators and 72.51116 per cent of the royalty owners in the unit area. The two Petitioners were the only parties, either lessees or royalty owners, who appeared before the Corporation Commission to oppose creation of this secondary recovery project. The unitization statute of Oklahoma requires that 63 per cent of the lessees and a similar percentage of the royalty owners approve any Plan of Unitization before it can be effective—only then can the Corporation Commission order approving the Plan and creating the Unit become operative: 52 Oklahoma Statutes 1961, Sections 287.1 to 287.15, incl. (52 Okla. Stat. Ann. 287.1 to 287.15, incl.).

In this connection it should be noted that the royalty owners under the Petitioners' oil and gas leases overwhelmingly approved this Plan of Unitization. The Petitioners own oil and gas leases covering three tracts which are designated in Exhibit "A" (R. 275), attached to the Plan of Unitization herein, as Tract No. 48 (40 acres—Trevlyn Oil Company—an undivided one-half interest), Tract No. 60 (80 acres—Jones Oil Company), and Tract No. 75 (56 acres—Trevlyn Oil Company). Ninety-nine per cent of their royalty owners in Tract No. 48 approved and executed the Plan of Unitization, approximately 70 per cent in Tract No. 60, and 75 per cent in Tract No. 75.

Contrary to the implication of the Petition herein this project is not dominated by Socony Mobil Oil Company, Inc., the "large integrated oil company" or by any other one operator lessee. Mobil has been designated as operator

of this secondary recovery project and as such acts on behalf of all lessees owning oil and gas leases in the unit area. It can be removed as operator by the other lessees if they should so desire to do so. Actually Mobil owns leases covering only approximately 27 per cent of the unit area. The interest of each of the numerous lessees in the unit is shown in Exhibit "B" attached to the Plan of Unitization (R. 276).

A brief history of this oil field may be of assistance to this Court since this case involves the presently pressing matter of state conservation laws and practices in the production of oil. Production in this particular field was originally found in 1927 and a total of 275 producing wells have been drilled. Some of the wells produced from one sand but 61 wells produced from two or three sands. Where more than one sand was productive all production was commingled in the well bore, i.e., none of the wells were dually or triply completed so that each sand could be separately produced. This was the condition existing when a group of the lessee operators in the field concluded, in view of the inevitable approach of the economic limits of production by primary methods, that a study should be made to determine the feasibility of unitized secondary recovery operations of these sands under the appropriate laws of Oklahoma, in order to produce that oil which would not be produced by primary methods and thus remain in the ground. In addition to Socony Mobil, Texaco, Inc., Phillips Petroleum Company, The Hefner Company, Kerr-McGee Oil Industries, Inc., Schermerhorn Oil Corporation, and Shell Oil Company (named parties in this action) other lessee operators participated in the engineering, geological

and operational studies. Among them were Rocket Oil Company, Miles Jackson, Hales Oil Interests, Wichita River Oil Company, Humble Oil & Refining Company; C. L. McMahan, Inc., Jake L. Hamon, J. M. Thompson, Jr.; Beard Oil Company; and Cox & Hamon.

After more than four years of study by petroleum engineering, geological and operating personnel representing the various lessee operators, this Plan of Unitization was formulated. During this period the record reflects that neither of the Petitioners sent representatives to the study group, whose meetings were known to all, and the minutes of such meetings were circulated to all lessee operators of record. Neither did they furnish any geological, engineering or production data.

After this Plan of Unitization for secondary recovery operations was formulated and the unit area delineated it was submitted to all of the lessee operators and royalty owners of record and, as stated above, 83.3358 per cent of the former and 72.51116 per cent of the latter approved it by executing the same. Then the Plan was submitted to the Oklahoma Corporation Commission as required by the laws of Oklahoma, *supra*. The application was filed by Socony Mobil Oil Company, Inc., as the formal applicant, but Texaco, Inc., Texaco Seaboard, Inc., Phillips Petroleum Company, Schermerhorn Oil Company, Kerr-McGee Oil Industries, The Hefner Company, Rocket Oil Company, Wichita River Oil Company, Beard Oil Company, Hales Oil Interests, and Shell Petroleum Company all entered their appearances in support of the application at the hearing before the Corporation Commission.

After approval of the Plan and creation of the Tatums Field Unit by the Corporation Commission these Petitioners appealed to the Oklahoma Supreme Court which affirmed the order of the Commission. Before the latter court the Petitioners' principal complaint was that the Oklahoma statutes, *supra*, did not authorize the unitization of three geologically separate sands for secondary recovery purposes. The Oklahoma Supreme Court considered this contention as well as the others made by Petitioners and held not only that the statute permitted creation of such a unit but that to hold otherwise would violate the very reasons for unitization.

With respect to the constitutionality of the order approving this Plan of Unitization for secondary recovery operations and creating this Tatums Field Unit, the Oklahoma Supreme Court in its opinion, 332 P.2d 751, 755, said:

> "We think these questions have been before us and decided adversely to protestants' contentions in Palmer Oil Corp. v. Phillips Petroleum Co., 204 Okla. 543, 231 P.2d 997, certiorari denied, Palmer Oil Corp. v. Amerada Petroleum Corp., 343 U.S. 390, 72 S.Ct. 842, 96 L.ed. 1022; Speirs v. Magnolia Petroleum Co., 206 Okla. 503, 244 P.2d 843; Woody v. State Corporation Commission, 265 P.2d 1102.
>
> "It clearly appears from the evidence in this case that the waterflooding (secondary recovery) under this Unitization Plan the *protestants* will recover far more oil than they would from primary recovery."

The court then quoted Article IX, Section 20 of the Oklahoma Constitution which requires the Supreme Court to "exercise its own independent judgment as to both the

law and the facts" where an appeal involves an asserted "violation of any right of the parties under the Constitution of the United States or the Constitution of the State of Oklahoma" and concluded:

> "We have exercised our independent judgment as to both the law and the facts in this case and we think the Corporation Commission should be affirmed."

Since the Petitioners at no time made a supersedeas bond staying the order of the Commission or the mandate of the Oklahoma Supreme Court, Socony Mobil, as operator, and the Operators Committee of the Tatums Field Unit, proceeded to take over the Unit Area for secondary operations on behalf of all parties in accordance with the Plan of Unitization and the order of the Oklahoma Corporation Commission.

Each time the Oklahoma Unitization Statute has been challenged as unconstitutional in this Court writ of *certiorari* has been denied and the appeal dismissed. *Palmer Oil Co. v. Amerada Petroleum Corporation, et al.* (consolidated with *Kit C. Farwell v. Amerada Petroleum Corporation, et al.*), 231 P.2d 997, *certiorari denied*, 343 U.S. 390, 96 L. Ed. 1022, 1026, 72 S. Ct. 842; *Stanolind Oil & Gas Co. v. West Edmond Hunton Lime Unit*, 193 F.2d 818, *certiorari denied*, 343 U.S. 920, 96 L. Ed. 1333.

In the first case (*Palmer Oil Co. v. Amerada Petroleum Corporation, supra*) this Court in a Per Curiam opinion said:

> "In the light of our previous decisions; appellants have failed to raise any substantial federal questions and the appeals are therefore dismissed. Cities Service

Gas Co. v. Peerless Oil & Gas Co., 340 US 179, 95 L. ed. 190, 71 S. Ct. 215 (1950); Railroad Com. of Texas v. Rowan & Nichols Oil Co., 311 US 570, 85 L. ed. 358, 61 S. Ct. 343 (1941); Railroad Com. of Texas v. Rowan & Nichols Oil Co. 310 US 573, 84 L. ed. 1368, 60 S. Ct. 1021, as amended 311 US 614, 615, 85 L. ed. 390, 61 S. Ct. 66 (1940); Patterson v. Stanolind Oil & Gas Co. 305 US 376, 83 L. ed. 231, 59 S. Ct. 259 (1939); Home Bldg. & Loan Asso. v. Blaisdell, 290 US 398, 435-437, 78 L. ed. 413, 427-429, 54 S. Ct. 231, 88 ALR 1481 (1934); Champlin Refining Co. v. Corporation Commission, 286 US 210, 76 L. ed. 1062, 52 S. Ct. 559, 86 ALR 403 (1932)."

As indicated in the Per Curiam opinion, *supra*, the two foregoing cases involved the original Oklahoma Unitization Statute enacted in 1945. This was superseded by the present statute, *supra*, which was enacted in 1951. The two are substantially the same except that the latter requires notice to and approval by royalty owners as well as lessee operators. The Oklahoma Supreme Court in *Woody* v. *State Corporation Commission*, 265 P.2d 1102, upheld the constitutionality of the 1951 statute, which is questioned herein, saying (page 1104):

"A comparison of the foregoing Act (1951) with the Unitization Act of 1945, House Bill 339 of the 1945 Legislature, Tit. 52 O.S. Supp. 1947 §§ 286.1 to 286.17 discloses that they are comparable in their material provisions. Under the Act of 1945, the oil and gas *lessees were the sole arbiters* to authorize and provide for unitization, management, operation and development of oil and gas properties to which the Act was applicable, *while under the present Act (1951) here involved, royalty owners, as well as the lease owners, must approve the Unitization agreement* prior to the

Commission's order establishing the same. The constitutionality of the former (1945 Act) has been upheld by this court in the following cases: Palmer Oil Corp. v. Phillips Petroleum Co., 204 Okl. 543, 231 P.2d 997, certiorari denied, Palmer Oil Corp. v. Amerada Petroleum Corp., 343 U.S. 390, 72 S. Ct. 842, 96 L. ed. 1022; Spiers v. Magnolia Petroleum Co., 206 Okl. 503, 244 P.2d 843.

"In the Palmer case the minority of the court were of the view that 'much less should it be necessary for the State to authorize a majority group of lessees to take over the operations of other lessees, to the objection and detriment of minority lessees, and over the objection of *all* royalty owners.' (204 Okl. 543, 231 P.2d 1020.) These objections have been removed by the repeal of the 1945 Unitization Act and the substitution of the 1951 Unitization Act, which latter Act requires notice to and approval of the unitization agreement by royalty owners, as well as lessee owners." (Emphasis supplied.)

In the foregoing case the protestants also contended the order approving the Plan and creating the unit was unconstitutional for substantially the same reasons advanced herein, including that the participation formula which allocated the oil produced by unit wells to the various separately owned tracts was inequitable and deprived them of their property in violation of the state and federal Constitutions.

Referring, in the above case, to this last contention, the Oklahoma Supreme Court first said (p. 1105):

"*We are of the view that the Unitization Act of 1951 requiring notice to and consent of royalty owners on*

a comparable basis with lease owners have placed the Act beyond any challenge on constitutional grounds.

"This court has held that the Legislature may curtail individual freedom in the public interest, and where the Legislature has made its choice as to the method and manner of the control, its choice is not subject to restraint, unless its application and enforcement impinges upon constitutional guarantees. Neither has the court the power or authority to resolve its doubts, whether the remedy adopted is as efficacious as many believe, or is not as good as some other plan or scheme suggested, or is better even than the blind operation of uncontrolled econonfic forces. Our duty ceases when we draw a line somewhere between opposing and conflicting abstract principles. Our duty is to decide—not to debate." Emphasis supplied.

Both the Oklahoma Supreme Court and this Court have recognized that evidence relating to the characteristics and performance of oil reservoirs far below the surface of the earth involves "incalculable variants," complexities, and inferences and opinions by technical experts, and that such evidence is best evaluated by the administrative agency charged with the duty of administering the conservation laws. This Court, in *Railroad Commission of Texas v. Rowan*, 310 U.S. 573, 60 S.Ct. 1021, 84 L.Ed. 1368, 1373, expressed it in the following language, which was adopted by the Oklahoma Court in *Deeper Producing & Refining Co. v. State*, 199 Okla. 171, 184 P.2d 961:

"* * * such cases are only episodes in the evolution of adjustment among private interests and in the reconciliation of all these private interests with the underlying public interest in such a vital source of energy for our day as oil. * * *"

"A controversy like this always calls for fresh reminder that courts must not substitute their notions of expediency and fairness for those which have guided the agencies to whom the formulation and execution of policy have been entrusted.

"* * * Certainly, in a domain of knowledge still shifting and growing, and in a field where judgment is therefore necessarily beset by the necessity of inferences bordering on conjecture even for those learned in the art, it would be presumptuous for courts, on the basis of conflicting expert testimony, to deem the view of the administrative tribunal, acting under legislative authority, offensive to the Fourteenth Amendment. * * *"

The foregoing aptly expresses the situation in secondary recovery unitization projects where the petroleum engineers and geologists have evaluated all of the available production and technical data and have formulated a plan for submission to the administrative tribunal. As the principal technical witness for the Respondents, Mr. Rod McIvor, who participated in the group studies as consultant of Rocket Oil Company, testified no one could state that each cubic foot of sand in the entire unit reservoir would contribute exactly the same, but that the contribution to the unit, while different, "all would be on the same order of magnitude (R. 92), and that there was not a tract in the unit area which would not contribute in some way to the waterflooding (secondary recovery operation) of the unitized reservoir (R. 101). With respect to so-called edge leases (along the unit's boundary), these would definitely contribute to the unit because they could be used for water injection wells and also to recover oil which otherwise

would be driven beyond the unit boundary by the waterflooding (R. 121).

Mr. McIvor further testified that it was impossible to make a quality correction in the participation formula for each "particular piece of rock" for the simple reason that ". . . we don't have the whole reservoir up on top of the ground to look at it, we are obliged to say that they are similar enough that we will treat them quality-wise and we will give them each acre foot as nearly as we can tell, the same credit" (R. 119, 120). He further expressed the opinion that the participation formula in the Plan of Unitization gave fair and equitable treatment to all because "under the existing conditions, the information which was available, the data and control that we had, we have used the best measuring stick of remaining waterflood reserves by using acre feet" (R. 122).

With respect to the conflict which may arise between conservation and individual rights, the Oklahoma Supreme Court in *Denver Producing & Refining Co. v. State, supra*, said at page 964:

> "* * * In most instances it is impossible to use a formula which will apply equally to all persons producing from a common source. In striking a balance between conservation of natural resources and protection of correlative rights, the latter is secondary and must yield to a reasonable exercise of the former. * * * The Commission has the power and is charged with the duty of conserving gas and oil resources. * * * Perhaps the Commission could have applied a formula which would have resulted in a greater equality and less inequity but the court must not substitute its no-

tion of expediency and fairness for that which guided the Commission to whom the formulation and execution of policy have been entrusted."

Some of the testimony of the Petitioners' technical witness Mr. Shih, who had never attended a single meeting of the lessees' technical study group during the more than four years of study, discloses why the Oklahoma Corporation Commission accepted the testimony of Mr. McIvor, Respondents' witness, and ordered creation of the unit.

Q. "Have you, in your own mind, reached any conclusion as to what you figure the weight should be or how the acre feet should be weighed in a formula?

A. No, I haven't exactly figured it, but based on what I have seen, I don't think it should get as much as 100 percent" (R. 179).

and

Q. "Am I correct that your testimony here has been primarily based upon the data and information from the report which was furnished Trevlyn by this (lessee operators' study group) committee? (Parenthetical explanation supplied.)

A. That is right.

* * * * * * *

A. Well, I never attended any committee meeting and I don't know how they worked really on this particular job" (R. 184).

and

Q. "You understood, of course, that that report was merely a feasibility report and being circulated among the operators and that nothing was to be done until the Operating Committee authorized

the same to be done, if, and when a plan of unitization was approved, did you not?

A. No, I did not realize that report was prepared entirely for the purpose of economic feasibility, and I depended on this report. I used it upon my engineering study" (R. 185).

and

Q. "(Mr. Rogers, Commission attorney) Looking at this problem from information that the Commission needs, are you under the opinion that this field should be unitized or should not be?

Q. Well, I think for any waterflood project, unitized operation is a much more and easier operation and efficient. My question is whether the Unit should come across this section line or not. That's my question" (R. 195-196).

and

Q. "(Mr. Rogers, Commission attorney) Of course the Commission is vitally interested in providing for the greatest ultimate recovery from any reservoir. Do you have any recommendation to the Commission that you think might possibly be a fair and equitable plan?

A. Well, I cannot offer anything other than what I have already said to divide it, but if the Commission has to either accept or reject the proposed Unit as a whole, I don't know . . . actually, I think to flood the three sands at one time, I think it would affect actually lowered efficiency of flooding than this the Tatums Sand alone. * * *" (R. 197-198).

and

Q "At the Engineering or Operators Committee hearings, did the opposition, we'll say for lack of a

better term, to the Unit plan offer any plan in the Engineering or Operating Committee meetings?

A. You say, did they offer any alternate?

Q. That's right, to the participation factor?

A. Well, by reading the minutes.

Q. You don't know personally?

A. No, I never attended a meeting, but in the minutes there were some other formulas offered" (R. 199-200).

Ironically, under the participation formula in the plan herein, which Petitioners contend is inequitable and unjust, they will receive more oil from the unit production allocated to their three tracts as primary recovery than they would in the absence of unitization. In addition thereto they will receive slightly less than 10 per cent of the estimated 22,500,000 barrels of secondary recovery oil, and this they would never recover in the absence of efficient secondary operations as in unitization.

Petitioners emphasize (Petition, p. 6) that they have been "compelled to pool" their production. It is true that unitization forces pooling in the interest of conservation and recovery of additional oil which could not be produced by primary operations, but the Spacing and Drilling Statute of Oklahoma (52 O.S. 1961, Sec. 87.1) also forces pooling of production, and this Court has held that statute to be constitutional. *Patterson v. Stanolind Oil & Gas Co.*, 77 P.2d 83, appeal dismissed, 59 S.Ct. 259, 305 U.S. 376, 83

L. Ed. 231; *Anderson-Prichard Oil Corp. v. Corporation Commission*, 241 P.2d 363, appeal dismissed, 72 S. Ct. 562, 342 U.S. 938, 96 L. Ed. 698; *Anderson v. Corporation Commission*, 327 P.2d 699, appeal dismissed, 79 S. Ct. 536, 358 U.S. 642, 3 L. Ed. 567.

CONCLUSION

Before concluding Respondents wish to state they have been advised that, while the Oklahoma Corporation Commission concurs in this response, the latter also desires to respond separately setting forth why that state administrative agency believes its order herein approving this Plan of Unitization and creating the Tatums Field Unit should be sustained as the Oklahoma Supreme Court has done. On account of later service of the petition herein upon the Commission, however, its time to respond does not expire until a later date.

It is respectfully submitted that the Petition for Writ of Certiorari herein should be denied.

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October, 1963.